

United States Government

NATIONAL LABOR RELATIONS BOARD

Region 30

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www.nlrb.gov

June 5, 2009

Mr. David Croysdale, Esq.
Michael, Best & Friedrich
100 East Wisconsin Avenue, 33rd Floor
Milwaukee, WI 53202

**Re: United Kiser Services LLC
Case 30-RM-563**

Dear Mr. Croysdale:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your petition for the following reasons:

The evidence shows there are two related outstanding unfair labor practice charges in United Kiser Services, LLC, Case 30-CA-18129 and Construction and General Laborers Union, Local 1329 (United Kiser Services, LLC) Case 30-CB-5352. The Region determined that these charges were meritorious and interrelated, and that the Petitioner received unlawful assistance from the Employer regarding the Petitioner's representation of the unit of employees at issue in the petition. Thus, the Region issued Complaints and an Order Consolidating Cases and Notice of Hearing in these cases on December 31, 2008; the Hearing is scheduled to begin on June 10, 2009.

On January 12, 2009, Joe Gallino, Secretary Treasurer and Field Representative of the Construction and General Laborers Union Local 1329, filed a petition in Case 30-RC-6745. On January 15, 2009, the Region issued an Order to Show Cause in that case, requesting that the parties present their arguments concerning why that petition should not be dismissed. After reviewing the parties' responses, I determined that the petition should be dismissed. That decision was consistent with *Halben Chemical Co.*, 124 NLRB 1431 (1959), wherein the Board held that a labor organization found to have received unlawful assistance has no standing to seek a Board conducted election and its petition is subject to dismissal; and *Sears, Roebuck & Co.*, 112 NLRB 559 (1955), wherein the Board found that such a labor organization may file a new petition based on an adequate showing of interest obtained after its illegal status as employee representative has been dissipated.

In Case 30-RM-563, you have relied on the same evidence to support this petition as that provided in Case 30-RC-6745. For the same reasons set forth in Case 30-RC-6745, and detailed above, I am dismissing the current petition, 30-RM-563.

Reinstatement of Petition: Upon request by the Employer-Petitioner after disposition of Cases 30-CA-18129 and 30-CB-5352, the petition may be reinstated, if appropriate. Accordingly, a copy of the order or other document that disposes of those cases will be sent to the Employer-Petitioner to the extent the Employer-Petitioner, a party to the unfair labor practice proceedings, has not otherwise been served.

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **June 19, 2009**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

¹ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Very truly yours,

/s/Irving E. Gottschalk
Irving E. Gottschalk
Regional Director

cc: Mr. William D Harris
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The Honorable Judge Rosenstein
Division of Judges
1099 14th Street, N.W., Room 5400 East
Washington, D.C. 20570-0001

Executive Secretary ***VIA E-MAIL***
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570